

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN DUDLEY HOLLAND,)	
ID # 873416,)	
Petitioner,)	
vs.)	No. 3:04-CV-1789-K (BH)
)	ECF
NATHANIEL QUARTERMAN, Director,)	Referred to U.S. Magistrate Judge
Texas Department of Criminal)	
Justice, Correctional Institutions Division,)	(Consolidated with
Respondent.)	No. 3:04-1790-K)

FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE

Pursuant to the provisions of 28 U.S.C. § 636(b), and an Order of Reference dated December 18, 2006, subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions, and recommendation of the Magistrate Judge are as follows:

I. BACKGROUND

On December 5, 2006, the Fifth Circuit Court of Appeals remanded this case for determination of whether petitioner's Notice of Appeal was delivered to prison officials for mailing on or before October 12, 2006. By Order of Reference dated December 18, 2006, the matter was referred to the undersigned Magistrate Judge for a recommendation concerning whether petitioner's notice of appeal was timely delivered.

To ascertain whether petitioner timely filed the notice, the undersigned Magistrate Judge sent a petitioner a questionnaire requesting that he provide the date he deposited the notice in the internal mail system of his institution.¹ Petitioner responded and verified that he placed his Notice

¹ Rule 25(a)(2)(C) of the Federal Rules of Appellate Procedure provides that "[a] paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing."

of Appeal in the prison mail system on October 11, 2006. Using that date as the date of filing, it appears that petitioner timely filed his notice of appeal. That date is entirely consistent with (1) the date this Court received the Notice of Appeal on October 17, 2006; (2) the cover letter dated October 11, 2005, that accompanied the Notice of Appeal; and (3) the envelope in which this Court received the Notice of Appeal and which exhibits what appears to be a United States Postal Service processing date of October 16, 2006.

II. RECOMMENDATION

For the foregoing reasons, it is **RECOMMENDED** that the Court find that petitioner timely filed his notice of appeal by placing it in the prison mail system on October 11, 2006; notify the Fifth Circuit Court of Appeals of that finding; and return the case to the Fifth Circuit for further proceedings as may be appropriate.

SIGNED this 1st day of February, 2007.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE